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MASTER OF MILITARY STUDIES

PARAMILITARY COVERT ACTION:
AN OPTIMIZATION OF CIA AND USSOF

SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF MILITARY STUDIES

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Executive Summary

Title: Paramilitary Covert Action: An Optimization of CIA and USSOF

Author: Major Joshe Raetz, United States Army

Thesis: The convergence of Title 10 and Title 50 regulated operations, specifically Military and Intelligence Operations paramilitary in nature, is a beneficial optimization of capabilities forged during a decade of war. In order to further optimize capabilities for the next decade of Irregular War, shift lead agency responsibility for Paramilitary Covert Action from the CIA to DoD, specifically USSOCOM.

Discussion: Increasingly since October 2001, U.S. intelligence operations have resembled traditional military operations and U.S. Military operations have appeared to be historically intelligence operations. Informed elites categorized this apparent merger as the convergence of Title 10 Military operations and Title 50 Intelligence operations. Most often within this debate on convergence, the Department of Defense is accused of overreaching into Intelligence line of responsibilities by executing stealthy USSOF operations. Commonly but to a lesser degree, the CIA is accused of serving as a Geographic Combat Command conducting traditional military activities such as training and advising indigenous forces or conducting drone strikes. Decades of precedence, cloudy or outdated U.S. legal framework, contradicting statutory definitions, and the fact that current enemies are non-state actors each fuel the discussion. While intuitive on the surface, there is more to consider in this debate especially when looking ahead to victory and stability in the next decade of Irregular War. This study focuses solely on Paramilitary Covert Action and the issues surrounding this capability. This study determines the risk of leaving the CIA as lead agency for Paramilitary Covert Action and reviews the case against USSOF's assumption as lead executor for Paramilitary Covert Action.

Conclusion: Enemies comprised of non-state actors, al Qaeda as the primary example, challenged the legacy Cold War era U.S. legal framework that regulates Paramilitary Covert operations. Both the CIA and DoD have developed or refined capabilities to target such enemies more effectively. The legal framework and associated oversight remain outdated. Now is the time, after a decade of war, to codify the necessary optimization of capabilities and enabling processes.

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THE OPIONIONS AND CONCLUSIONS EXPRESSED HERIN ARE THOSE OF THE INDIVIDUAL STUDENT AUTHOR AND DO NOT NECESSARILY REPRESENT THE VIEWS OF EITHER THE MARINE CORPS COMMAND AND STAF COLLEGE OR ANY OTHER GOVERNMENTAL AGENCY. REFERENCES TO THIS STUDY SHOULD INCLUDE THE FORGOING STATEMENT.

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PREFACE

This paper is focused on Paramilitary Covert Action. Given such, there are other Covert Action programs - Political, Propaganda, and Economic - that remain beyond the scope of this research.

The debate on Paramilitary Covert Action is broad and lofty. As a result of initial research and interviews with elites within the Department of Defense and Intelligence Community, this paper provides an organizational and legal lens through which to view the optimization of CIA and USSOF for Paramilitary Covert Action. Excluded from detailed research and beyond the scope of this paper, are other considerations of Paramilitary Covert Action including; human factors of day-to-day operations, internal politics, extent of Executive Authority to conduct Covert Action, International Humanitarian Law, policy, and bilateral agreements with host countries. Each of these topics deserves detailed research and is worthy of a paper. The result of an organizational and legal approach to Paramilitary Covert Action, are recommendations that address the long term, structural circumstances of the U.S. conducting such operations.

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Despite being solely authored, the research and writing of this paper was a team effort and teammates deserve recognition for their efforts. Dr. Richard DiNardo, who served as my primary mentor, guided the research and writing process with equal parts persistence and latitude. Without his mentorship, the thesis would have remained a distant question void of any tangible solutions. Senior leaders within both the Intelligence Community and Department of Defense, through interviews during initial research, provided primary perspectives that proved invaluable to frame the problem and jump start secondary research. Lieutenant Colonel Michael Lewis, the USSOF Chair to Marine Corps University, challenged my research throughout and provided helpful reviews of multiple drafts. A number of senior USSOF leaders read early drafts and provided valid feedback that refined and in some cases changed final recommendations. My wife provided immeasurable encouragement throughout the process. Without her untiring support, I would have stopped researching and not reached such valuable recommendations. I appreciate the efforts of each teammate and grew from their candid, friendly input.

During the last decade of war, writers, scholars, and lawyers characterized Title 10 and Title 50 authorized operations as the convergence of military and intelligence operations. Military and Intelligence professionals as well as elected and appointed officials announced successes of traditional military activities as Title 50 operations and approved or oversaw lethal intelligence operations that appeared to be Title 10 in nature. The tone of the convergence debate often left the uninformed with distaste towards the U.S. Military for perceived overreach into intelligence responsibilities or distrust towards the Intelligence Community for fighting as a combatant command. The debate regularly centered on Paramilitary operations conducted by the Central Intelligence Agency (CIA) and United States Special Operations Command (USSOCOM).

In order to optimize Paramilitary capabilities for the next decade of Irregular War,¹ it is time to review and update existing authorities, identify and eliminate temporary capabilities, and codify the necessary approval and oversight processes. In accordance with a 9/11 Commission Report recommendation, the Defense Department specifically USSOCOM, should take lead responsibility for Paramilitary Covert Actions. This shift will enable the transformation of the CIA, optimize operational capabilities, clarify domestic law, and align appropriate oversight without compromising the required secrecy for national security or discarding political or policy concerns such as sovereignty, International Humanitarian Law, and Law of Armed Conflict.

This paper is focused on Paramilitary Covert Action. Given such, there are other Covert Action programs - Political, Propaganda, and Economic - that remain beyond the scope of this research. As a result of initial research and interviews with elites within the Department of Defense and Intelligence Community, this paper provides an organizational and legal lens through which to view to the optimization of CIA and USSOF for Paramilitary Covert Action. Excluded from detailed research and beyond the scope of this paper, are other considerations of

Paramilitary Covert Action including; human factors of day-to-day operations, internal politics, extent of Executive Authority to conduct Covert Action, International Humanitarian Law, policy, and bilateral agreements with host countries. Each of these topics deserves detailed research and is worthy of a paper. The result of an organizational and legal approach to Paramilitary Covert Action, are recommendations that address the long term, structural circumstances of the U.S. conducting such operations.

A review of the major recurring themes within the debate – statutory authorities, Congressional oversight, disposition of CIA and USSOCOM, and trend of convergence – will serve as a framework to measure the benefits and risks associated with the current convergence. The foundation for this review is an understanding of Paramilitary Covert Action.

Covert Action

In 1991, Congress amended the National Security Act of 1947 and defined Covert Action in federal law as “an activity or activities of the United States Government to influence the political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly.”² Covert Action lies between softer powers of diplomatic negotiations, economic sanctions, and development initiatives and harder power options such as decisive military actions.³ Although debated, Covert Action offers a more flexible and responsive foreign policy tool than traditional “soft” and “hard” powers.⁴

Traditionally divided into three operational subsets - Propaganda⁵, Political Action⁶, and Paramilitary - Covert Action now includes a fourth subset of Information Warfare.⁷ The Paramilitary subset of Covert Action is traditionally the most well known given the larger size, level of armed violence, and “noise” associated with the resulting operation. Paramilitary operations usually involve the training, equipping, and advising of armed groups for a direct

assault on an adversary.⁸ Goals of Paramilitary Covert Action programs vary from the protection of a friendly foreign government under threat to the overthrow of a foreign government through indigenous, military means. Historically, Paramilitary Covert operations have targeted the military, security forces, or governmental leaders of an adversary regime, but more recent Paramilitary Covert Action operations have focused on individual non-state terrorist leaders.⁹ While this paper includes all Paramilitary operations whether overt, covert, or against belligerent states, it is the current and forecasted irregular threats that have challenged the existing authorities and legal framework designed for traditional operations between states.

Statutory Authorities

The discussions of the technical authorities governing Covert Action, especially in current or forecasted conflicts, range the spectrum from Just War Theory and International Humanitarian Law through Executive Powers derived from Article II of the U.S. Constitution. Debates on convergence routinely focused on the distinction between USC Titles 10 and 50, relative to CIA and USSOCOM operations, and varied interpretations of each.

Formally titled *Armed Forces*, USC Title 10 is the domestic code that outlines and regulates the role of the U.S. Armed Forces. Section 167 regulates the Unified Combatant Command for Special Operations.¹⁰ USSOCOM is mandated to conduct Special Operations characterized as Direct Action, Strategic Reconnaissance, Unconventional Warfare, Foreign Internal Defense, Counter Terrorism, and such other activities as may be specified by the President or the Secretary of Defense.¹¹ This same section of USC withholds authority of USSOCOM from conducting any activity which, if carried out as an intelligence activity by the Department of Defense, would require a notice to the Permanent Select Committee on Intelligence of the House of Representatives (HPSCI) and the Select Committee on Intelligence

of the Senate (SSCI) under Title V of the National Security Act of 1947 (50 USC 413 et seq. – Covert Action).¹² Such other activities as specified by the President or SECDEF, including Paramilitary Covert Action, could be categorized and authorized as either Title 10 or Title 50 operations depending on the context surrounding the operation.

USC Title 50, commonly cited regulating Intelligence Operations, is formally titled *War and National Defense*. The chapter titled *National Security* includes the germane subchapter, Accountability for Intelligence Activities, §413b regulating Presidential approval and reporting of Covert Actions. This code broadly outlines and regulates the Intelligence Community, including the Department of Defense and the Central Intelligence Agency, as led by the Director of National Intelligence. The Director of National Intelligence has the designated authority to task the Department of Defense to conduct intelligence activities considered National Intelligence requirements.

A misconception is that the military, specifically USSOCOM, is not authorized and does not conduct Title 50 intelligence operations. The USC Title 50, *War and National Defense*, includes considerable authority for the Secretary of Defense to conduct intelligence activities. The Secretary of Defense executes missions and collects intelligence via both Titles 10 and 50 using the National Geospatial Intelligence Agency, National Security Agency, Defense Intelligence Agency, and Cyber Command. Intelligence activities, as authorized by USC Title 50, are authorized activities for the Secretary of Defense to task DoD capabilities to collect information to support the Unified Command Plan. Given the SECDEF's Title 50 authorities and inherent capabilities within USSOCOM, the President and Secretary of Defense could task USSOF or Geographic Combatant commanders to employ USSOF or, to conduct a clandestine¹³ or covert mission targeting a pre-designated non-state actor such as Osama bin Laden. Different

interpretations of and overlapping responsibilities within USC § 50 often result in skewed understandings of convergence, despite attempts to clarify the processes.

In 1991 Congress enacted USC Title 50 law, which defined Covert Action, to clarify roles between the Central Intelligence Agency as an executor of Covert Action and other departments that execute similar operations. Congress excluded the following categories from the statutory definition of covert:

- (1) activities the primary purpose of which is to acquire intelligence, traditional counterintelligence activities, traditional activities to improve or maintain the operational security of United States Government programs, or administrative activities;
- (2) traditional diplomatic or military activities or routine support to such activities;
- (3) traditional law enforcement activities conducted by the United States Government law enforcement agencies or routine support to such activities; or
- (4) activities to provide routine support to the overt activities (other than activities described in paragraph (1), (2), or (3)) of other United States Government agencies abroad.¹⁴

Although not defined within the statute or the 1991 amendment, the traditional military exemption is how most Special Operations are categorized since the Secretary of Defense routinely deploys USSOF under SECDEF authorities and orders. The conferee's notes of 1991 emphasize the exclusion of traditional military activities:

It is the intent of the conferees that 'traditional military activities' include activities by military personnel under the direction and control of a United States military commander (whether or not the U.S. sponsorship of such activities is apparent or later to be acknowledged) preceding and related to hostilities which are either anticipated (meaning approval has been given by the national Command Authorities for the activities and for operational planning for hostilities) to involve U.S. military forces, or where such hostilities involving United States military forces are ongoing, and where the fact of the U.S. role in the overall operation is apparent or to be acknowledged publicly. In this regard, the conferees intend to draw a line between activities that are and are not under the direction and control of the military commander. Activities that are not under the direction and control of a military commander should not be considered as 'traditional military activities.'¹⁵

According to the same conference report, traditional military activities meet the following criteria:

- (1) conducted by U.S. military personnel,

- (2) under the direction and control of a U.S. military commander,
- (3) preceding and related to anticipated hostilities or related to ongoing hostilities involving U.S. military forces, and
- (4) the U.S. role in the overall operation is apparent or to be acknowledged publicly.¹⁶

An author in the field of national security and Covert Action noted USSOF's authorities to conduct Covert Action; "...covert operations conducted by special operations forces during wartime clearly do not require a presidential finding and congressional notification."¹⁷ This observation highlights the obscuring nature of the Title 10-50 debate, at least as applied to Paramilitary Covert Action and USSOF's authorization to conduct Covert Action. In the case of the raid to kill Osama bin Laden, the President exercised assumed authorities, under Article II of the Constitution, to approve the lethal operation in Pakistan.¹⁸ The President could have legally approved this operation as USC Title 50 or Title 10, regardless of the methodologies USSOF and the CIA employed.

As highlighted, the current legal framework and existing authorities are overlapping, contradictory, or at the very least unclear. Executing missions under such an outdated legal framework, creates redundant capabilities and inefficiencies that potentially decrease overall effectiveness and jeopardize national security. With such an unclear framework, Congress serves as the authority to clarify and oversee the implementation of USC, in this case laws regulating Paramilitary Covert Action.

Oversight

As per USC 50, both the HPSCI and SSCI oversee Covert Actions while the House Armed Services Committee and the Senate Armed Services Committee oversee military operations to include military intelligence operations. The President is mandated to notify Congress, at a minimum a "Gang of 8" and "no more than 48 hours after authorizing" all Covert Actions.

A perception about DoD intelligence activities, Preparation of the Environment taskings, or USSOF missions, is that these missions are beyond Congressional oversight. This perspective assumes the Secretary of Defense, the Joint Chiefs of Staff, and Commander of USSOCOM avoid informing the President and Congress on programmed, planned, and executed Special Operations. Clearly this is not the case as the Secretary of Defense, other senior DoD leadership, especially the designated office of Assistant Secretary of Defense for Special Operations and Low Intensity Conflict (ASD/SOLIC), and USSOCOM Commanding Officer along with the other Geographic Combatant commanders who command theater Special Operations missions, report to Congress regularly. Although there may be a lack of oversight by the HPSCI and SSCI on USSOF operations, this is not the same as a lack of Congressional oversight.

However, in the contentious areas of overlap between USSOF operations and CIA intelligence activities, it is prudent for the HPSCI and SSCI to attend regularly scheduled briefings to the HASC and SASC or have access to such reports. This cross communication between the HASC and SASC with the HPSCI and SSCI will likely thwart any misperceptions of inadequate oversight of USSOF operations. This increased oversight would reinforce the bureaucratic agility required for post 9/11 Covert operations, especially against non-state actors, as commonly employed in the field.

Disposition and roles of CIA and USSOF

The parent organization of the CIA and USSOF, the Office of Strategic Studies chartered in July of 1942 and disbanded in 1945, conducted operations that spanned the spectrum from overt to covert. Over the next seven decades, the CIA and USSOF diverged and converged, contingent on the relative threat to the United States and leaders' application of these national capabilities. At times such convergence, or divergence, was developed in the trenches while other times

Congress mandated reform and clarified distinct lanes of responsibilities.

Since the Congressionally mandated National Security Act of 1947 that established the Director of Central Intelligence, the CIA has grown significantly in size and has taken on responsibilities outside its originally intended purpose, which was to coordinate the intelligence activities of several Government departments and agencies.¹⁹ However, over the last six decades, the CIA has matured into an agency with an updated mission to be the Nation's first line of defense. According to the CIA's website, the mission of the CIA is as follows:

We accomplish what others cannot accomplish and go where others cannot go. We carry out our mission by: Collecting information that reveals the plans, intentions and capabilities of our adversaries and provides the basis for action. Producing timely analysis that provides insight, warning and opportunity to the President and decision makers charged with protecting and advancing America's interests. Conducting covert action at the direction of the President to preempt threats or achieve US policy objectives.²⁰

The variations and growth of the Director and the Central Intelligence Agency have been a result of perceived external threats to the United States and policy or implementation of each President's National Security Strategy and policies.

Throughout the years and despite modifications, the primary mission of the Central Intelligence Agency has remained focused on the collection and analysis of intelligence commonly referred to as Foreign Intelligence or FI, and the art of counterespionage commonly referred to as Counter Intelligence or CI.²¹ A seventeen-year veteran Operations Officer of the CIA, Mr. William Daughtery, made this especially clear:

One common romance among both critics and the general public, is that the CIA exists mainly to run covert action programs and is a strong advocate for these operations. The primary mission of the CIA are the provision of strategic intelligence to policymakers through the clandestine collection of secret information and the subsequent independent, all-source analysis of that material, and counterintelligence/counterespionage. Covert Action – and, now, the broader range of capabilities known as 'special activities' – runs a far distant third to the two principal missions.²²

To accomplish the multiple stated missions, the CIA is separated into four components, each

one of which contributes to the primary, secondary, and tertiary missions.²³ The clandestine arm of the CIA, the National Clandestine Service serves the National Command Authority through the coordination, de-confliction, and evaluation of operations across the Intelligence Community of the United States.²⁴ Within the NCS, the Special Activities Center conducts Paramilitary Covert Action operations.²⁵ The SAC conducted Paramilitary Covert Action operations in places such as Poland in 1950, Cuba longstanding although most recognizably in 1961, throughout Indochina mid 1960s, and in El Salvador during 1980's.²⁶ In many of the areas that SAD executed Covert Action, USSOF also operated overtly, covertly, and clandestinely.

Congress established USSOCOM in 1987 as a Unified Combatant Command to “organize, train, equip, and provide combat-ready Special Operations Forces (SOF) to other geographic combatant commands.²⁷” In 2004, the Department of Defense directed USSOCOM to assume increased responsibility for planning, synchronizing, and, as directed, executing global counterterrorism operations and shifted USSOCOM from a Supporting to a Supported Command.²⁸ In October 2008, USSOCOM was designated as the DoD proponent for Security Force Assistance (SFA). In this role, USSOCOM performs a synchronizing function in global training and assistance planning similar to the previously described role of planning against terrorist networks.²⁹ Serving as the DoD proponent for Security Force Assistance, boosts USSOCOM's agency of by, with, and through Special Operations.

The Department of Defense defines Special Operations as follows:

Operations requiring modes of employment, tactical techniques, equipment, and training often conducted in hostile, denied, or politically sensitive environments and characterized by one or more of the following: time sensitive, clandestine, low visibility, conducted with and/or through indigenous forces, requiring regional expertise, and/or a high degree of risk.³⁰

Unlike the CIA where the primary mission is Strategic Intelligence and Covert Action is a distant third priority, USSOF's primary mission is to conduct highly sensitive operations,

whether uniformed military or paramilitary, overt, covert, or clandestine, in denied or high-risk environments.³¹ Depending on the method of operation, USSOF may operate unilaterally or by, with, and through surrogates to implement U.S. foreign policy. The mission requirements and operating environment may require secrecy and disguise of U.S. sponsorship even if later acknowledged. The methods for USSOF to execute missions vary widely depending on the desired objectives, operational environment, partners, and adversaries.³²

USSOCOM is comprised of over 60,000 active duty, National Guard, and reserve personnel³³ from all four services and Department of Defense civilians assigned to headquarters, four components, or a sub-unified command. USSOCOM has grown relative to mission requirements and National tasking. Since September 11, 2001, “USSOCOM manpower has nearly doubled, the budget nearly tripled, and overseas deployments have quadrupled.”³⁴ The disposition of USSOCOM allows senior leaders to undertake vast but limited operations worldwide to implement foreign policy and achieve policy objectives. The disposition of USSOCOM is a contributing factor to the convergence of military and intelligence operations.

Current Trend of Convergence

The convergence of CIA and DoD operations, specific to Paramilitary Covert Action, surfaces a few ways in modern times; armed UAV strikes outside of Afghanistan, cyber operations beyond intelligence collection, Paramilitary operations to kill or capture terrorists, and more traditional train, equip, and advise of indigenous forces. In each of these cases, the application of CIA or DoD capacity, how the operation is authorized using Title 10 or 50, and who should lead the operation, are matters of policy and politics. The President authorizes operations through Title 50 or otherwise given sovereignty considerations of the nation in which the operation will be conducted, the relationship between the U.S. and the other nation, and the

capability and willingness of the other nation to act. The current trend of convergence offers a bureaucratic solution to navigate such murky issues, or at least the perception thereof.

There are two ways in which DoD capacity conducts Paramilitary Covert Action. The first is for the President to designate via a finding, DoD as lead agent on a particular mission. The other and more common method is for DoD to detail capacity to the CIA to support an existing finding.³⁵ Detailing capacity from DoD to the CIA is a bureaucratic shift of capacity from one agency to another. The activities of the shifted capacity remain the same during a Covert Action whether detailed or not, or while categorized as Title 10 or 50. The perceived benefit to a detailing process is a relatively agile system to transfer DoD capacity to the CIA while retaining political fig leaves believed helpful for issues of sovereignty, Law of Armed Conflict concerns, or grounds to argue within International Humanitarian Law.

Another advantage to the detailing process is that the CIA can assume DoD capacity to conduct the operation, alleviating a requirement to build parallel capabilities per se. This advantage potentially reduces redundant capabilities and prevents unnecessary costs to develop, train, and fund parallel programs. This is theoretically cost saving and responsive to unpredictable operational needs. While beneficial, there is more to consider when reviewing the benefits of CIA or DoD led Paramilitary Covert Action operations.

Counterintuitive of Convergence

Covert operations, missions divergent from and outside of normal intelligence activities, are operations to implement or execute policy. With a primary mission of Strategic or Foreign Intelligence collection and analysis, the CIA maintains a desired separation, for objectivity, between intelligence and policy.³⁶ Covert operations, at least for the CIA, are exceptional and

the only instance in which CIA executes or implements policy.³⁷ The Defense Department, inherently an extension of policy, almost always executes policy during military operations.

A contributor to the debate argued that DoD, particularly USSOF, overreached into traditionally U.S. Intelligence lanes of responsibility by conducting Paramilitary operations.³⁸ Others opined that USSOF's assumption of lead for Paramilitary Covert Action will diminish USSOF's capability or capacity to conduct Unconventional Warfare, Strategic Reconnaissance, Direct Action or Counter Proliferation of Weapons of Mass Destruction. However, instead of viewing USSOF missions and Paramilitary Covert Action on separate spectrums or parallel lines, they should be viewed on the same spectrum or line defined by environment, political considerations, or other contextual factors. The threat, operating environment, or political situation changes the operational methodology and ultimately determines whether current USC Title 50 or 10 applies. USSOF's primary mission is to execute sensitive missions by, with, and through partner nations, indigenous forces, and surrogates. This is USSOF's only mission.

By maintaining its position as the lead for Paramilitary Covert Action, the CIA is required to take on a responsibility, a distant third in mission priority, that ultimately takes time, talent, and funding away from the primary mission of collecting and analyzing strategic intelligence to inform senior policy makers. To apply CIA capacity to conduct Paramilitary Covert Action, is to assume that the CIA provides all of the Strategic Intelligence required for the President, the National Security Council, and the executing Departments on matters of national security, including; Iranian plans and intentions; disposition, plans and intentions of Mexican drug cartels; or plans and intentions of fragile post Arab Spring governments. A greater risk of maintaining the status quo therefore, is that the CIA's capacity to conduct Strategic Foreign Intelligence, a responsibility that no other agency can perform as effectively, is compromised. The President,

DNI, Director of the CIA, and the SECDEF are well positioned to accept such risks and lead where agility is required.

A concern regarding the designation of USSOF as lead for Paramilitary Covert Action is the belief that DoD is not as agile or responsive as the CIA. For instance, the CIA infiltrated Afghanistan as early as September 26th, 2001 while the military did not infiltrate until October 19th, 2001.³⁹ However, the reason why the CIA was able to address this almost a month before military forces arrived was that it had long-term relationships with contacts and the Northern Alliance in Afghanistan. While USSOF is often presented as incapable of establishing or maintaining such contacts in places where the USG is likely to need them, this is not the case. The CIA had long-term relationships and contacts in place because two presidents since 1999 issued multiple Paramilitary Covert Action findings requiring such relationships.⁴⁰ It is unlikely that the CIA would have had any of these assets or long-term relationships in place were it not for the published policies and supporting Paramilitary Covert Action findings. Likewise, USSOF could have had long-term relationships capable of supporting earlier infiltration into Afghanistan if authorized to execute Paramilitary Covert Action against bin Laden prior to 9/11.

Another criticism of USSOF is its lack of responsive funding, a critical requirement for Covert Action. Section 1208, was updated in 2011 to extend and increase House Resolution 1540 of the NDAA 2012, which authorizes the Secretary of Defense to expend funds to provide support to foreign forces, irregular forces, groups or individuals engaged in or facilitating ongoing military operations by USSOF to combat terrorism.⁴¹ This 1208 authorization is funding authorization only and currently excludes Covert Action. This funding authority is currently projected through 2014 and measured against relative irregular threats or USSOCOM's operational requirements to counter threats by, with, and through foreign partners. In practical

matters, the sponsorship or role of the U.S. and specifically USSOF may remain under acknowledged or unacknowledged via 1208 funding. The § 1208 funding authority creates a similarly responsive and agile funding system for USSOCOM, similar in agility to CIA appropriations and funding systems.

Under original 2005 §1208, the Secretary of Defense is required to provide an annual report no later than 30 days after the close of each fiscal year to congressional defense committees resulting in congressional oversight for funding. The SECDEF also must notify, in writing, Congressional committees of the intended use of §1208 funds. The stated notification requirements reinforce Congressional oversight similar to appropriation notifications of the CIA for Paramilitary Covert Action.

The CIA and the Department of Defense use other similar methodologies when executing Covert Action missions. While there may be slight differences in methodologies, the technical difference is that the CIA conducts Covert Action during peacetime while the Defense Department conducts covert missions during wartime.⁴² While this difference is clear for pre and post World War II and Cold War periods, the distinction is not as clear against irregular threats. The nature of terrorist and irregular threats, may create the impression that the U.S. and Partner Nations are always in a state of war, albeit limited in scope. Therefore changes are needed to maintain national security in the decade ahead.

Recommendations

Given USSOCOM's primary mission of Special Operations by, with, or through other forces, and the CIA's primary mission of collecting and analyzing strategic Foreign Intelligence, the lead for Paramilitary Covert Action should be shifted from the CIA to USSOCOM. This shift, regulated by USC and precedence, will naturally align U.S. domestic law and oversight

mechanisms with the appropriate capabilities of the U.S. Government to conduct Paramilitary Covert Action missions. The CIA will be free from the responsibilities of leading Paramilitary Covert Actions and positioned to recoup lost capacity to meet the mandated transformation and focus on collection and analysis of Strategic Foreign Intelligence.⁴³ Congressional oversight and accountability will be clearer as will the unity of effort to achieve foreign policy objectives.

With USSOCOM as lead in Paramilitary Covert Action, the United States gains a plausible cover story for the United States and Partner Nations if U.S. Covert Action is eventually uncovered or disclosed. Given the likelihood of disclosure, a cover story is most plausible when the covert executor is positioned to become the overt executor. Considering USSOCOM's lead responsibilities in by, with, and through operations and Security Force Assistance operations, USSOCOM should shoulder the last fraction of missions on this operational spectrum – that fraction of Paramilitary Covert Action.

With USSOCOM as the lead agency for all Paramilitary operations, the U.S. and Partner Nations gain a roll-over option from covert to overt operations, and defensive operations including unilateral raids through multilateral or regional FID operations. USSOCOM can execute the mission with the intent to remain covert for decades. When disclosed and if the circumstances allow, the United States can roll the covert mission into an overt train, equip, advise mission with the Partner Nation, surrogate, or proxy forces. A CIA led covert operation, when disclosed, forbids a roll-over option; rather, disclosure requires the CIA to terminate the mission, continue in an overt manner that is not a tertiary mission for the CIA, or transfer the mission to the Defense Department for an overt train, advise, assist mission. None of these options are optimal since keeping the mission internal to a single unit or agency is more likely to achieve foreign policy objectives. The skill sets of the operators remain nearly unchanged

whether overt or covert while the operational approach and bureaucratic procedures (acknowledgment, funding, authorities, and oversight) change to reflect the nature of the operation. This approach consolidates all by, with, and through operations regardless of acknowledged partnership, covert or overt, and Special Operation or Security Force Assistance.

President Obama, the National Security Council, appropriate Congressmen from HPSCI, SSCI, HASC and SASC, Secretary of Defense, Director of the CIA, and USSOCOM Commanding Officer each bring recent relevant experiences required to undertake this shift. The President, appointed Secretaries, and Congress will have one line of responsibility in dealing with all military operations – Secretary of Defense. DoD and USSOCOM will also receive clear unity of command and effort to focus on by, with, and through military operations regardless of the environment or intended target.

To ensure trusted accountability and transparency, whether real or simply perceived, Congressional oversight of Paramilitary Covert Actions must be increased from a Presidential notification or “Gang of 8” to a “Gang of 16” or similarly adequate model. The updated notification recipients should include HPSCI and SSCI peers from the HASC and SASC, or Foreign Relations and Appropriations committees as appropriate. This broader notification will ensure adequate legislative oversight for Paramilitary Covert Action and any highly sensitive Special Operations that could otherwise be perceived as Paramilitary Covert Action. This broader notification eliminates any perception of an end run by DoD on Congressional oversight and parallels operational collaboration commonly employed in the field. The integration of HASC and SASC leadership into the notification process for Paramilitary Covert Action will do little, if anything, to threaten the required secrecy of or speed necessary to ensure operational success. Increasing the notification recipients should also serve to codify changes made since

2001, and between presidential administrations on the approval processes for USSOCOM to execute highly sensitive operations outside of designated theaters of war.⁴⁴

Shifting the lead responsibility for Paramilitary Covert Action to USSOCOM and updating the required oversight to include appropriate HASC and SASC members, requires updating USC Titles 10 and 50. USC Title 10, within § 167, should specify USSOCOM's role as the lead responsibility for Paramilitary Covert Action. Since there are contradicting statements within §167 of Title 10, revisions must eliminate the constraint⁴⁵ and include directions for USSOCOM to assume lead for Paramilitary Covert Action. Title 50 should also be updated to reflect USSOCOM's lead responsibility for Paramilitary Covert Action and the revised notification with oversight requirements that include appropriate HASC and SASC members.

The Department of Defense, and specifically the SECDEF with his senior legal team, the Under Secretary of Defense for Intelligence (USD-I), the ASD/SOLIC, and the USSOCOM Commanding Officer and staff should review institutional, organizational, and operational practices of the CIA to understand what is required to assume the responsibility of Paramilitary Covert Action. The comprehensive review should focus on policy reviews and notification procedures, institutional readiness and training requirements, operational security and counterintelligence practices, funding strategies and fiscal dealings, procurement and accountability of equipment and weapons, and coordination mechanisms throughout the USG among other things. Each entity should provide an initial report to Congress within 90 days, detailing what they need in order to assume the additional responsibilities to ensure quick and effective integration. The CIA, and specifically the Director with his senior legal teams, counterintelligence and financial specialists, and SAC should support DoD's review and help to integrate this responsibility in the next fiscal year.

The Director of the CIA should submit to Congress a report on how to transition ongoing CIA projects to the DoD and, most importantly, how to recoup capacity to reinvest in the primary mission of the CIA. The current talent executing Paramilitary Covert Action will be available to support and mentor USSOCOM during the designated transition period. Following the transition period, the Director could reinvest CIA human capital into other areas of the NCS or focus this capacity to Political, Propaganda, or Economic forms of Covert Action.

The Director's report should include recommendations for the CIA, and other intelligence agencies as appropriate, to assume responsibility for human contacts or information assessed to be of intelligence value uncovered during USSOCOM Paramilitary Covert Action missions. A likely byproduct of CIA Paramilitary Covert Action is valuable information and potential sources for HUMINT operations. While conducting Paramilitary Covert Action, USSOF would be positioned to gain access to this same information and human contacts. If not directly related to the Paramilitary Covert Action but still determined to be of value, the USSOF entity would be responsible for reporting the information to the appropriate field authorities for further reporting, dissemination, or development.⁴⁶ A proactive plan to organize and transition potential intelligence or clandestine sources, as coordinated by the DNI, will eliminate internal competition and solidify the collaborative approach refined on the battlefields and other sensitive areas during the last decade.

Conclusion

Though it made sense for the CIA to assume lead responsibility for Paramilitary Covert Action after World War II and during the Cold War, the model is less practical in the current operational environment and threatens the national security during times of Irregular War. Non-state actors and increasingly belligerent, sponsoring states challenged the U.S. legal framework

that regulates Paramilitary Covert Action and has demonstrated that the current legal framework and associated oversight are imbalanced with national capabilities. Now is the time, after a decade of war, to codify the necessary optimization of capabilities and enabling processes. The first step towards optimization is to shift lead responsibility for Paramilitary Covert Action from the CIA to DoD. This shift will unify efforts required to achieve future policy demands without compromising required secrecy or forfeiting political fig leaves. The skeleton authorities are in place, the precedence established, and the experienced leaders are positioned to update the appropriate codes and mechanisms necessary for the future of Irregular War.

¹ U.S. DoD Joint Publication 1-02 defines Irregular Warfare as “A violent struggle among state and non-state actors for legitimacy and influence over the relevant population(s). Irregular warfare favors indirect and asymmetric approaches, though it may employ the full range of military and other capacities, in order to erode an adversary’s power, influence, and will.”

² *National Security Act of 1947*, Public Law No. 235, 80th Cong. (July 26, 1947), as amended by Public Law 102-88 (August 14, 1991), sect. 503.

³ Mark M. Lowenthal, *Intelligence: From Secrets to Policy*, (Washington, D.C.: CQ Press, 2003), 124-125

⁴ William J. Daugherty, *Executive Secrets: Covert Action and the Presidency* (Lexington, KY: The University Press of Kentucky, 2004), 19-21

⁵ Propaganda Covert Action is the dissemination of information designed to influence a specific audience. Once Covert, both Radio Free Europe and Radio Liberty broadcasted to former Soviet and Eastern European citizens transferred to overt programs.

⁶ Political Covert Action is designed to aggressively influence another state government towards U.S. policy objectives. Political Covert Action can address individuals or groups, support allies or undermine adversaries, and may include financing political groups or influencing current members of a foreign government. An example of a CIA Political Covert Action is the prevention of the Italian Communist Party from winning an election between 1948 and 1960.

⁷ William J. Daugherty, *Executive Secrets: Covert Action and the Presidency* (Lexington, KY: The University Press of Kentucky, 2004), 71-72

⁸ The Central Intelligence Agency and the Department of Defense define Paramilitary differently. Paramilitary to the CIA means that the U.S. officers are from within the CIA’s Directorate of Operations, Special Activities Division rather than members of the uniformed armed services. The Department of Defense defines Paramilitary to be forces or groups distinct from the regular armed forces of any country, but resembling them in organization, equipment, training, or mission. The Defense Department’s use of Paramilitary forces implies that the partner forces with whom the U.S. is working are indigenous, surrogates, or irregulars even when the U.S. advisors are uniformed service members. While slight, this difference adds to the confusion in the debate of convergence of Paramilitary capabilities.

⁹ Mark M. Lowenthal, *Intelligence: From Secrets to Policy*, (Washington, D.C.: CQ Press, 2003), 130

¹⁰ USC Title 10, <http://uscode.house.gov/download/pls/10C6.txt>

¹¹ USC Title 10, Sec. 167, <http://uscode.house.gov/download/pls/10C6.txt>

¹² USC Title 10 Sec 167 para 4 subpara g

¹³ Joint Doctrine separates clandestine and covert operations in definition “...A clandestine operation differs from a covert operation in that emphasis is placed on concealment of the operation rather than on concealment of the identity of the sponsor. In Special Operations, an activity may be both covert and clandestine and may focus equally on operational considerations and intelligence-related activities.” Joint Publication 1-02, “Department of Defense Dictionary of Military and Associated Term,” Nov 8, 2010, amended through 15 Nov, 2011.

¹⁴ *National Security Act of 1947*, Public Law No. 235, 80th Cong. (July 26, 1947), as amended by Public Law 102-88 (August 14, 1991), sect. 503.

¹⁵ U.S. Congress, House of Representatives, Committee of Conference, *Conference Report on H.r. 1455 (“Intelligence Authorization Act, Fiscal year 1991)*, 102nd Conf., 1st sess., July 25, 1991, 5905-5906

¹⁶ Chesney, *Journal of National Security Law and Policy*

¹⁷ Kibbe, "Covert Action and the Pentagon," *The Rise of the Shadow Warriors*, Foreign Affairs, 63.

¹⁸ During Special Operations in the most sensitive areas or against the most sensitive targets, the President or SECDEF may retain execute approval. This applies to anticipatory Special Operations such as Preparation of the Environment or Strategic Reconnaissance. Special Operations are normally under the control of a Military Commander authorized by an EXORD.

¹⁹ *National Security Act of 1947*, Section 102, 26 July 1947, Central Intelligence: Origin and Evolution, Michael Warner, CIA History Staff, Center for the Study of Intelligence, Central Intelligence Agency, Washington, D.C., 2001

²⁰ CIA Missions and Values last updated 30 Dec 2011, <https://www.cia.gov/about-cia/cia-vision-mission-values/index.html>

²¹ William J. Daugherty, *Executive Secrets: Covert Action and the Presidency* (Lexington, KY: The University Press of Kentucky, 2004), 9-11

²² William J. Daugherty, *Executive Secrets: Covert Action and the Presidency* (Lexington, KY: The University Press of Kentucky, 2004), 32

²³ The components of the CIA listed on the Agency's website, are the Directorate of Intelligence (DI), the Directorate of Science and Technology (DS&T), the Directorate of Support (DS), and the former Directorate of Operations (DO) now the National Clandestine Service (NCS).

²⁴ Clandestine Service, last updated 08 Jul 2011, <https://www.cia.gov/offices-of-cia/clandestine-service/index.html>

²⁵ Mark M. Lowenthal, *Intelligence: From Secrets to Policy*, (Washington, D.C.: CQ Press, 2003), 131

²⁶ Harry Rositzke, *The CIA's Secret Operations: Espionage, Counterespionage, and Covert Action*, (Westview Press, Inc., Boulder, CO, 1988) 168-180

²⁷ Public Law 99-661, 10 U.S.C. Sec. 167

²⁸ Fact Book: United States Special Operations command," USSOCOM Public Affairs, February 2011, p. 4.

²⁹ Andrew Feickert, Congressional Research Service, RS21048, U.S. Special Operations Forces (SOF): Background and Issues for Congress, July 15, 2011, <http://www.fas.org/sgp/crs/natsec/RS21048.pdf>

³⁰ Joint Publication 1-02, "Department of Defense Dictionary of Military and Associated Term," Nov 8, 2010, as amended through 15 Nov, 2011.

http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf

³¹ William J. Daugherty, *Executive Secrets: Covert Action and the Presidency* (Lexington, KY: The University Press of Kentucky, 2004), 32

³² The core activities of Special Operations Forces (SOF) are Unconventional Warfare, Foreign Internal Defense, Counterterrorism, Strategic Reconnaissance, Direct Action, and other activities as may be specified by the President or the Secretary of Defense. USC Title 10 §167,

<http://uscode.house.gov/downloads/pls/10C6.txt>, USSOCOM includes Counterinsurgency, Stability, Countering Weapons of Mass Destruction, Support to Major Combat Operations or Campaigns, and Preparation of the Environment into SOF Core Activities and Operations. USSOCOM Factbook 2012, <http://www.ussocom.mil/factbook>

³³ The core operators of USSOCOM are U.S. Army Special Forces, aka "Green Berets," Army Rangers, U.S. Navy SEALs, Special Boat Crewman, U.S. Air Force Combat Controllers,

Pararescuemen, Special Operations Weathermen, Combat Aviation Advisors, U.S. Marine Corps Critical Skills Operators, and critical enablers with pilots and intelligence analysts as examples.

³⁴ ADM Olson testimony March 2001

³⁵ Vincent Paul Bramble, *Covert Action Lead – Central Intelligence Agency or Special Forces*, (United States Army Command and General Staff College: Fort Leavenworth, Kansas, 2007), 31

³⁶ Mark M. Lowenthal, *Intelligence: From Secrets to Policy*, (Washington, D.C.: CQ Press, 2003), 133

³⁷ Allan Goodman, *The Need to Know*, The Report of the Twentieth Century Fund Task Force on Covert Action and American Democracy, The Twentieth Century Fund Press, New York, 1992, 31

³⁸ Kibbe, *Foreign Affairs*, 2004, Rise of the Shadow Warriors

³⁹ Woodward's *Bush at War*, 142 and 249

⁴⁰ Woodward's *Bush at War*, 5-8

⁴¹ PL108-375, www.dod.mil

⁴² William J. Daugherty, *Executive Secrets: Covert Action and the Presidency* (Lexington, KY: The University Press of Kentucky, 2004), 60

⁴³ While only a small percentage of the few hundred officers assigned to SAC have skills directly transferable to collect Strategic Foreign Intelligence in other divisions within the NCS, recouping capacity includes talented enablers such as analysts, logisticians, planners, and counterintelligence technicians.

⁴⁴ Kibbe, JNSLP pg 388, referenced an increase by the current administration to internally review Special Operations outside of designated theaters of war, this is a considerable point and raises valid questions to balance current reviews by including legislative notification and codify procedures that will carry over from one administration to the next, ultimately reasonable additions will provide a more objective review of operations and clarify the processes from the President to responsible commanders in the field, a prudent update especially given the forecasted generation of Irregular Warfare.

⁴⁵ USC Title 10 § 167 is contradictory as previously discussed, USSOCOM is expected to execute any such other activities as directed by the President while also exempted from executing any activity which would require a notice to the HPSCI and SSCI under USC Title 50 413 et seq. – Covert Action.

⁴⁶ If the information or potential contact is directly related to the Paramilitary Covert Action, the USSOF entity would retain responsibility for reporting the information and developing the potential contact unilaterally with organic USSOCOM capability. In this case, the USSOF entity would still have the responsibility to coordinate this HUMINT operation with the appropriate authorities in the field.

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